BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ROSA B. DIMAS)
Claimant	
VS.) Dealat No. 204 005
WESSEN PROPILETS) Docket No. 204,885
WESCON PRODUCTS)
Respondent)
Self-Insured)

ORDER

Claimant appealed from an Order entered by Administrative Law Judge John D. Clark on October 10, 1995 denying claimant's request for preliminary benefits.

ISSUES

Whether claimant has shown just cause for failure to give notice within ten (10) days as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties the Appeals Board finds:

(1) A finding that claimant has not shown just cause for failure to give notice is an integral part of the notice obligation and raises an issue that is subject to review on appeal from a preliminary order. K.S.A. 44-534(a)(a)(2). The Appeals Board finds that claimant has failed to show just cause and the decision by the Administrative Law Judge should be affirmed.

On May 22, 1995 claimant returned to work for respondent after a pregnancy leave. Claimant alleges that she injured her low back in the course of her employment for respondent on or about May 30, 1995. Claimant's injury occurred when she felt something "pop" while she was bent over at work. According to claimant's version of the events, she did not notify the employer of the work-related injury until she had been given work restrictions. The record indicates she was given the work restrictions by Dr. Eyster more than ten (10) days after the date of the accident. Claimant argues there was just cause for failure to give notice within ten (10) days because of her difficulty communicating in English and her belief that the injury was related to her previous pregnancy, not work. The Appeals Board agrees with the decision of the Administrative Law Judge that the stated reasons do

not constitute just cause for failure to give notice in light of the fact that the injury appears to have been a sudden onset of pain while carrying a box at work. Claimant experienced a sudden onset of pain severe enough to cause her to seek medical treatment and leave work. She, nevertheless, failed to notify her employer of any work-related injury. Under the circumstances, the Appeals Board finds that she has not established just cause for failure to give timely notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated October 10, 1995, should be, and the same is, hereby affirmed.

Dated this day of January 1996.	
BOARD MEMBER	
BOARD MEMBER	
BOARD MEMBER	

c: Richard Sanborn, Wichita, Kansas Ross Hollander, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED